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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILDA LAPID, an individual,

Plaintiff,

v.

BANK OF AMERICA
CORPORATION, a Delaware
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 2:18-cv-06733-DSF-AFM

*[Discovery Document: Referred
to Magistrate Judge Alexander F.
MacKinnon]*

**~~{PROPOSED}~~ ORDER
APPROVING STIPULATED
PROTECTIVE ORDER¹**

Complaint Filed: July 6, 2018
Removal Filed: August 6, 2018
Trial Date: February 4, 2020

¹ This Stipulated Protective Order is based substantially on the model protective order provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

1 Plaintiff GILDA LAPID (“Plaintiff”) and Defendant BANK OF AMERICA
2 CORPORATION (“Defendant”) (Plaintiff and Defendant are collectively referred
3 to herein as the “Parties”), agree to be bound by, and agree to instruct their
4 representatives to abide by, the terms of the following protective order, and hereby
5 stipulate to and petition the Court to enter the following stipulated protective order
6 (hereafter “Stipulated Protective Order” or “Order”)

7 1. A. PURPOSES AND LIMITATIONS

8 Discovery in this action is likely to involve production of confidential,
9 proprietary, or private information for which special protection from public
10 disclosure and from use for any purpose other than prosecuting this litigation may
11 be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to
12 enter the following Stipulated Protective Order. The Parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to discovery
14 and that the protection it affords from public disclosure and use extends only to the
15 limited information or items that are entitled to confidential treatment under the
16 applicable legal principles.

17 B. GOOD CAUSE STATEMENT

18 This action is likely to involve trade secrets, customer and pricing lists and
19 other valuable research, development, commercial, financial, technical and/or
20 proprietary information for which special protection from public disclosure and from
21 use for any purpose other than prosecution of this action is warranted. Such
22 confidential and proprietary materials and information consist of, among other
23 things, confidential business or financial information, information regarding
24 confidential business practices, or other confidential research, development, or
25 commercial information (including information implicating privacy rights of third
26 parties), information otherwise generally unavailable to the public, or which may be
27 privileged or otherwise protected from disclosure under state or federal statutes,
28 court rules, case decisions, or common law. Accordingly, to expedite the flow of

1 information, to facilitate the prompt resolution of disputes over confidentiality of
2 discovery materials, to adequately protect information the parties are entitled to keep
3 confidential, to ensure that the Parties are permitted reasonable necessary uses of
4 such material in preparation for and in the conduct of trial, to address their handling
5 at the end of the litigation, and serve the ends of justice, a protective order for such
6 information is justified in this matter. It is the intent of the Parties that information
7 will not be designated as confidential for tactical reasons and that nothing be so
8 designated without a good faith belief that it has been maintained in a confidential,
9 non-public manner, and there is good cause why it should not be part of the public
10 record of this case.

11 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
12 SEAL

13 The Parties further acknowledge, as set forth in Section 12.3, below, that this
14 Stipulated Protective Order does not entitle them to file confidential information
15 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
16 the standards that will be applied when a party seeks permission from the court to
17 file material under seal.

18 There is a strong presumption that the public has a right of access to judicial
19 proceedings and records in civil cases. In connection with non-dispositive motions,
20 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
21 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*
22 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics,*
23 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
24 good cause showing), and a specific showing of good cause or compelling reasons
25 with proper evidentiary support and legal justification, must be made with respect to
26 Protected Material that a party seeks to file under seal. The Parties' mere designation
27 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
28 submission of competent evidence by declaration, establishing that the material

1 sought to be filed under seal qualifies as confidential, privileged, or otherwise
2 protectable—constitute good cause.

3 Further, if a party requests sealing related to a dispositive motion or trial, then
4 compelling reasons, not only good cause, for the sealing must be shown, and the
5 relief sought shall be narrowly tailored to serve the specific interest to be protected.
6 *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
7 each item or type of information, document, or thing sought to be filed or introduced
8 under seal in connection with a dispositive motion or trial, the party seeking
9 protection must articulate compelling reasons, supported by specific facts and legal
10 justification, for the requested sealing order. Again, competent evidence supporting
11 the application to file documents under seal must be provided by declaration.

12 Any document that is not confidential, privileged, or otherwise protectable in
13 its entirety will not be filed under seal if the confidential portions can be redacted. If
14 documents can be redacted, then a redacted version for public viewing, omitting only
15 the confidential, privileged, or otherwise protectable portions of the document, shall
16 be filed. Any application that seeks to file documents under seal in their entirety
17 should include an explanation of why redaction is not feasible.

18 19 2. DEFINITIONS

20 2.1 Action: *Gilda Lapid v. Bank of America Corporation*, Case No. 2:18-
21 cv-06733-DSF-AFM.

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation
23 of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
27 Good Cause Statement.

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1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
2 their support staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”

6 2.6 Disclosure or Discovery Material: all items or information, regardless
7 of the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.

10 2.7 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as
12 an expert witness or as a consultant in this Action.

13 2.8 House Counsel: attorneys who are employees of a party to this Action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a party
19 to this Action but are retained to represent or advise a party to this Action and have
20 appeared in this Action on behalf of that party or are affiliated with a law firm that
21 has appeared on behalf of that party, and includes support staff.

22 2.11 Party: any party to this Action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7
8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.

14 Any use of Protected Material at trial shall be governed by the orders of the
15 trial judge. This Order does not govern the use of Protected Material at trial.

16
17 4. DURATION

18 Once a case proceeds to trial, information that was designated as
19 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
20 as an exhibit at trial becomes public and will be presumptively available to all
21 members of the public, including the press, unless compelling reasons supported by
22 specific factual findings to proceed otherwise are made to the trial judge in advance
23 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
24 showing for sealing documents produced in discovery from “compelling reasons”
25 standard when merits-related documents are part of court record). Accordingly, the
26 terms of this protective order do not extend beyond the commencement of the trial.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection
4 under this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents, items,
8 or communications for which protection is not warranted are not swept unjustifiably
9 within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
28 contains protected material. If only a portion of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed "CONFIDENTIAL." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order. Then, before
10 producing the specified documents, the Producing Party must affix the
11 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
12 portion of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings
14 in the margins).

15 (b) for testimony given in depositions that the Designating Party identifies
16 the Disclosure or Discovery Material on the record, before the close of the deposition
17 all protected testimony.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 "CONFIDENTIAL." If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party's right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37-1 et seq.

10 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
11 joint stipulation pursuant to Local Rule 37-2.

12 6.4 The burden of persuasion in any such challenge proceeding shall be on
13 the Designating Party. Frivolous challenges, and those made for an improper purpose
14 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may
15 expose the Challenging Party to sanctions. Unless the Designating Party has waived
16 or withdrawn the confidentiality designation, all Parties shall continue to afford the
17 material in question the level of protection to which it is entitled under the Producing
18 Party's designation until the Court rules on the challenge.

19
20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a Non-Party in connection with this
23 Action only for prosecuting, defending or attempting to settle this Action. Such
24 Protected Material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. When the Action has been terminated, a
26 Receiving Party must comply with the provisions of section 13 below (FINAL
27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
8 as employees of said Outside Counsel of Record to whom it is reasonably necessary
9 to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
25 not be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the court. Pages of transcribed
28 deposition testimony or exhibits to depositions that reveal Protected Material may

1 be separately bound by the court reporter and may not be disclosed to anyone except
2 as permitted under this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the Parties engaged in settlement discussions.

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall
12 include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the subpoena
15 or order is subject to this Protective Order. Such notification shall include a copy of
16 this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination by the court from which the
22 subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material and nothing in these provisions
25 should be construed as authorizing or encouraging a Receiving Party in this Action
26 to disobey a lawful directive from another court.

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1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
27 of seeking protection in this court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the Parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60
13 days of a written request by the Designating Party, each Receiving Party must return
14 all Protected Material to the Producing Party or destroy such material. As used in
15 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving
18 Party must submit a written certification to the Producing Party (and, if not the same
19 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
20 (by category, where appropriate) all the Protected Material that was returned or
21 destroyed and (2) affirms that the Receiving Party has not retained any copies,
22 abstracts, compilations, summaries or any other format reproducing or capturing any
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
26 reports, attorney work product, and consultant and expert work product, even if such
27 materials contain Protected Material. Any such archival copies that contain or
28

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3
4 14. VIOLATION

5 Any violation of this Order may be punished by appropriate measures
6 including, without limitation, contempt proceedings and/or monetary sanctions.

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: July 16, 2019

BROWN LAW GROUP

11
12
13 Janice P. Brown
14 Arlene R. Yang
15 *Attorneys for Defendant*
16 BANK OF AMERICA CORP.

17
18 DATED: July 16, 2019

JAY S. ROTHMAN & ASSOCIATES

19
20 Jay S. Rothman
21 O. David Natanzi
22 *Attorneys for Plaintiff GILDA LAPID*

23
24 GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: 7/17/2019



26
27 ALEXANDER F. MacKINNON
28 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on _____ [date]
8 in the case of *Gilda Lapid v. Bank of America Corporation*, Case No. 2:18-cv-06733-
9 DSF-AFM, pending in the U.S. District Court for the Central District of California.
10 I agree to comply with and to be bound by all the terms of this Stipulated Protective
11 Order and I understand and acknowledge that failure to so comply could expose me
12 to sanctions and punishment in the nature of contempt. I solemnly promise that I
13 will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with
15 the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action. I hereby appoint _____
20 [print or type full name] of _____
21 [print or type full address and telephone number] as my California agent for service
22 of process in connection with this action or any proceedings related to enforcement
23 of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28